SRP.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 1 of 2004
in
SECOND APPEAL NO. 434 OF 2002.

Madhavi Dattatraya Kulkarni. ..Petitioner.

Versus.

Prakash Ramchandra Kulkarni
& Anr. ..Respondents.

Shri. A. V. Anturkar for the petitioner.

Shri. M. V. Limaye for the respondent Nos.1 & 2.

CORAM: S.B.MHASE,J.
DATE: September 19, 2006.

P.C.

1. Heard. This is an application for review of an order dated 13th June 2003. The decree passed in partition suit is challenged by filing second appeal. However, while considering the said appeal for admission, mainly two grounds were raised. By a first ground, it was submitted that pursis Exhibit-20 was wrongly interpreted. By the said pursis, it was stated that the appellant is not desirous of claiming any share in the suit property described in paragraphs- 1B and 1C. Pursis further states that amendment application is not pressed. Thus, having found that the appellant has relinquished his share in the suit property described in paragraphs 1B and 1C, the submission of learned counsel was rejected.

2. The second ground was raised in respect of the share in the suit property described in paragraph 1-E. However, the said share was rejected on the ground that the said property was sold by Indirabai during her life time and before filing of the suit and since the property was not available for partition at the time of filing of the suit, share of the appellant in the suit property was rejected.

3. However, today, it is brought to my notice that there is a typing mistake in the paper book which was considered and therefore, First Appellate Court committed an error in holding that property was sold by Indirabai and thereby rejected the share in the said property. However, it is now pointed out from original record that the statement made by the original plaintiff - appellant is that "Indirabai during her life time has not transferred and/or has not executed Will-deed in respect of said property", however, erroneously, in the paper book, it is stated that Indirabai has transferred the property during her life time. Therefore, the mistake has occurred in the judgment. Apart from the said error being pointed out by the learned counsel, learned counsel has also placed on record an affidavit of the Power of Attorney of appellant, supported by search report, entries in revenue record to show that property was not disposed of by Indirabai during her

life time and therefore, said property was available for partition at the time of filing suit. Therefore, apparently there is an error in the judgment of the First Appellate Court, which was further carried out by this Court while considering the appeal for admission in the order referred to above. Therefore, this Court is of the view that the order of summary dismissal of the appeal requires to be recalled, and therefore order dated 13-06-2003 is hereby recalled. Review petition is allowed in above terms and original second appeal be listed on board for admission.

(S.B.MHASE, J.)